ATLANTIC RICHFIELD CO.

IBLA 81-330 Decided April 19, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting in part geothermal lease applications. N-30531, et al.

Affirmed in part, set aside and remanded in part.

1. Geothermal Leases: Discretion to Lease--Geothermal Leases: Environmental Protection

   The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

2. Geothermal Leases: Discretion to Lease--Geothermal Leases: Environmental Protection--Geothermal Leases: Stipulations

   The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

APPEARANCES: Stuart Watson, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Atlantic Richfield Company has appealed from decisions, issued January 5, 1981, by the Nevada State Office, Bureau of Land Management (BLM), which partially rejected noncompetitive geothermal lease applications N-30531, N-30535, and N-30541 and rejected in its entirety N-30532. 1/ These applications, for various lands in T. 5 N., Rs. 27, 28 E., Mount Diablo meridian, were rejected because BLM determined that leasing would conflict with sage grouse strutting grounds and with a ghost town listed on the National Register of Historic Places. BLM's conclusions were based on an environmental analysis record (EAR) which recommended against leasing these lands.

Appellant argues that it is unreasonable to preclude leasing totally in order to protect the area. First, appellant claims that seasonal stipulations could prevent interference with sage grouse activities during the period of greatest vulnerability. In addition, appellant argues that the borders of the ghost town encompass only part of the land that BLM refused to lease in order to protect the town. Appellant claims that the ghost town includes a third of sec. 18, a small portion of sec. 19 and none of sec. 17, T. 5 N., R. 28 E., Mount Diablo meridian, whereas BLM rejected all available land in those sections. 2/

[1] Under section 3 of the Geothermal Steam Act of 1970, 84 Stat. 1566, 30 U.S.C. § 1002 (1976), public lands are available for geothermal leasing at the discretion of the Secretary of the Interior. Cortex, Inc., 34 IBLA 239 (1978); Eason Oil Co., 24 IBLA 221 (1976). A BLM decision to refrain from leasing specific lands for geothermal resources will generally be upheld when the record shows the decision to be a reasoned analysis of the environmental and public interest factors involved. Earth Power Corp., 55 IBLA 249, 88 I.D. 609 (1981); Oxy Petroleum, 36 IBLA 59 (1978); The Anschutz Corp., 34 IBLA 270 (1978). The burden is on the geothermal lease applicant to show that exploration and development activity would not adversely affect the land. Oxy Petroleum, supra; Cortex, Inc., supra.

The Pine Nut-Walker EAR (N-11233) examines the prospective impacts of geothermal and oil and gas leasing in a 1-3/4 million-acre area for the Carson City District, BLM. This EAR recommended against leasing in Aurora, a "relatively intact" ghost town (EAR at 167). The town developed after gold and silver were discovered there in 1860. Cellars, mill foundations, a cemetery, and the shell of a mill remain (EAR at 86). The site is listed in the National Register of Historic Places (40 FR 5293 (Feb. 4, 1975)). It has not yet been systematically surveyed (EAR at 89), and thus the areal extent of possible historical values may not be coextensive with the actual historic site. Any surface disturbance could reduce or destroy archeological and historic values and might increase the risk of vandalism (EAR at 121). While appellant has criticized the extent of the land withheld from leasing to safeguard the Aurora site, it has not really controverted the main concerns of BLM. Thus, we affirm BLM's decision rejecting geothermal leasing with respect to sec. 18 (N-30541) and sec. 17 (N-30532).

1/ BLM also rejected applications N-30536 and N-30539 for reasons unrelated to this appeal. Appellant did not dispute these determinations on appeal.

2/ In actuality, the lands within sec. 19 were rejected because they were too proximate to the sage grouse strutting grounds. Compare EAR at 167 with EAR at 173.

[2] The EAR also notes that the sage grouse strutting grounds are crucial habitat, and that reproduction depends on unmolested use of the grounds (EAR at 53). Disturbance of grounds would be likely to cause these specialized birds to leave the area (EAR at 119). The EAR recommended against leasing either within the strutting grounds or in a 2-mile buffer zone around them (EAR at 155, 173), including lands in sec. 24, T. 5 N., R. 27 E., and sec. 19, T. 5 N., R. 28 E. (N-30531); secs. 20, 28, and 29, T. 5 N., R. 28 E. (N-30532), and sec. 21, T. 5 N., R. 28 E. (N-30535).

While the EAR does contain some support for the conclusion reached, appellant points out that Nevada has developed a special stipulation dealing with the sage grouse which prohibits surface occupancy of the actual strutting grounds and provides additional restrictions of adjacent lands during critical time periods. Appellant suggests that, rather than reject the application, BLM should have imposed these special stipulations.

Although we have long recognized the authority of BLM to refuse to issue mineral leases for specific parcels of land in order to protect environmental values, we have also consistently held that offers to lease should not be rejected because of the presence of other values without prior consideration being given to the feasibility of imposing special stipulations to achieve the same protection. See, e.g., David H. Yates, 44 IBLA 121 (1979).

Appellant's submissions indicate that it may indeed be possible to lease some of the rejected areas provided proper protective stipulations are utilized. We believe BLM should reexamine the policy of blanket prohibition of geothermal leasing within 2 miles of the sage grouse strutting grounds, in light of the stipulation apparently used elsewhere in Nevada. If BLM determines it would not be feasible to protect the sage grouse by any method other than rejection of the offers for the parcels appealed herein, it may again reject appellant's application. In that case, however, BLM should explain why reliance on protective stipulations would not be feasible.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Nevada State Office are affirmed in part, and set aside and remanded in part.

James L. Burski
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge